IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETTY SILFA	:	CIVIL ACTION
	:	
v.	:	
	:	
MERIDIAN BANK a/k/a	:	
CORESTATES BANK a/k/a	:	
FIRST UNION BANK	:	NO. 98-4293

MEMORANDUM AND ORDER

HUTTON, J. April 8, 1999

Presently before this Court is the Motion to Dismiss Plaintiff's Complaint, or in the alternative, for Summary Judgment by Defendant First Union National Bank, as successor-in-interest for purposes of this case to Meridian Bank and CoreStates Bank (Docket No. 3), Plaintiff Betty Silfa's response thereto (Docket No. 4), and Defendant's reply thereto (Docket No. 5). For the reasons stated below, the Defendant's Motion for Summary Judgment is **DENIED with leave to renew** following close of discovery, and Defendant's Motion to Dismiss is **GRANTED in part** and **DENIED in part**.

I. BACKGROUND

This case involves claims of discrimination in violation of the Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e ("Title VII") (Count One), the Civil Rights Act of

1866, 42 U.S.C. § 1981 ("§ 1981") (Count Two), the Pennsylvania Human Relations Act, 43 P.S. § 951 ("PHRA") (Count Three), and breach of contract under Pennsylvania law (Count Four). Defendant First Union National Bank, as successor-in-interest for purposes of this case to Meridian Bank and CoreStates Bank, seeks to dismiss the action under Federal Rules of Civil Procedure 12(b)(6) and 56(c).

The complaint alleges the following facts, which are viewed in the light most favorable to Plaintiff, Betty Silfa. Silfa was employed by Meridian[1] from on or about November 2, 1992, until April 26, 1995, when she resigned under circumstances constituting a constructive discharge. During the course of her employment, Silfa held the position of a floating Assistant Manager and was earning approximately $35,000 per year at the time of her resignation. Silfa was trained in consumer lending in anticipation of becoming a Branch Manager and/or Human Resources Officer and maintained a satisfactory job performance rating and at all times fulfilled all of her duties and obligations commensurate with her employment.

Silfa alleges that, beginning on or about September 1, 1993, and continuing until on or about April 26, 1995, Meridian failed and refused to appoint Silfa as a Branch Manager and/or Human

[1]Since the time of her resignation, Meridian Bank has merged with CoreStates Bank and CoreStates Bank has, in turn, merged with First Union National Bank.

Resources Officer, positions she was qualified for before joining Meridian and trained for by Meridian in anticipation of the above appointment. More particularly, Silfa represents that the following events occurred:

Silfa was qualified to be and was employed as a branch manager before starting employment with Meridian. when Silfa was hired by Meridian, Meridian represented to Silfa that she would be promoted to branch manager as soon as a branch manager position became available. Meridian wanted Silfa to receive additional training in consumer lending, which Silfa accomplished during her tenure at Meridian. Silfa, while at Meridian, applied for permanent assistant manager, branch manager, and human resources officer positions on at least seven different occasions, but she was denied such positions because of her race and national origin. After leaving Meridian, Silfa was hired by another bank as a branch manager and has since been promoted to Vice President in charge of multiple branches.

While at Meridian, Silfa suffered illness, stress, and had various mental and physical ailments as a result of the failure to promote, the hostile work environment, the demotion, and retaliation for complaining about the failure to promote and the hostile work environment. The discrimination suffered by Silfa is part of an ongoing practice or pattern of discrimination by Meridian in the promotion of persons of Hispanic origin. Silfa was

and is qualified for the position of branch manager and/or human relations officer. Silfa was denied promotions to the positions of branch manager and human relations officer as a result of discriminatory practices by Meridian. Similarly situated individuals received the promotions Silfa applied for who were not members of a protected class and who were less qualified. During Silfa's tenure at Meridian, Silfa was the only Hispanic assistant manager. Meridian had no Hispanic branch managers and virtually no Hispanic persons in management positions. To obtain a permanent position, and to no longer be a floater, Silfa had to accept a demotion in grade and loss of seniority, which was discriminatory in that non-minority individuals and not have to accept similar demotions in order to obtain permanent positions.

Meridian, notwithstanding complaints by Silfa, did nothing to discipline Meridian employees who made negative comments about Silfa's Spanish accent and who complained about Silfa receiving telephone calls from Spanish-speaking individuals and talking to those individuals in Spanish and being overly friendly with those individuals, even though the callers were customers of Meridian. Silfa suffered other embarrassments and instances of lack of respect directed toward her as a Hispanic individual. These actions were continuing violations of harassment occurring during Silfa's tenure at Meridian until her constructive discharge. These discriminatory actions caused Silfa to resign in order to regain

her health and find employment which was non-discriminatory.

During the course of Silfa's employment, she complained to Robert Palko, Personnel Officer; Mark Connlyn, Ms. Kneeley's superior, Kathryn Kneeley and Eileen Iwashyna that she was being harassed due to her Hispanic origin and denied appointment as a branch manager for the same reason. Silfa's complaints were unresolved by Meridian and no actions were taken by Meridian to resolve these issues. The actions of Defendant, acting as aforesaid, created an intolerable and hostile working environment and Plaintiff was discriminated against based on her national origin, color, race, and Spanish accent. Thereafter, as a direct result of the aforesaid discriminatory employment practices engaged in by the Defendant and the physical and mental ailments suffered by Plaintiff as a result of such discriminatory employment practices, Plaintiff resigned on April 26, 1995.

On October 23, 1998, the Defendant filed its motion to dismiss, or in the alternative, for summary judgment. The Plaintiff filed her response on November 3, 1998. On November 12, 1998, the Defendant filed a reply memorandum in support of its motion to dismiss/summary judgment. Because the Plaintiff has not had an opportunity to conduct discovery, the Defendant's Motion for Summary Judgment is not ripe, and thus this Court refuses to consider the Defendant's Motion for Summary Judgment. The Court considers, however, Defendant's Motion to Dismiss under Rule 12(b)(6).

II. DISCUSSION

A. Defendant's Summary Judgment Motion is Not Ripe

The purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmoving party. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974

F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

The Court, however, may deny summary judgment if the motion is premature. Anderson, 477 U.S. at 250 n.5. Because a plaintiff should not be "'railroaded' by a premature motion for summary judgment," the United States Supreme Court has held that a district court must apply Federal Rule of Civil Procedure Rule 56(f) if the opposing party has not made full discovery. Celotex, 477 U.S. at 326. Rule 56(f) provides:

> Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f) (emphasis added). Thus, the district court is empowered with discretion to decide whether the movant's motion is ripe and thus determine whether to delay action on a motion for summary judgment. St. Surin v. Virgin Islands Daily News, Inc., 21 F.3d 1309, 1313 (3d Cir. 1994); Sames v. Gable, 732 F.2d 49, 51 (3d

Cir. 1984).

In order to preserve the issue for appeal, Rule 56(f) requires the opposing party to a motion for summary judgment to file an affidavit outlining the reasons for the party's opposition. See St. Surin, 21 F.3d at 1313; Galgay v. Gil-Pre Corp., 864 F.2d 1018, 1020 n.3 (3d Cir. 1988); Dowling v. City of Philadelphia, 855 F.2d 136, 139-40 (3d Cir. 1988). The United States Court of Appeals for the Third Circuit has consistently emphasized the desirability of full technical compliance with the affidavit requirement of Rule 56(f). See St. Surin, 21 F.3d at 1314; Radich v. Goode, 886 F.2d 1391, 1393-95 (3d Cir. 1989); Lunderstadt v. Colafella, 885 F.2d 66, 70 (3d Cir. 1989); Dowling, 855 F.2d at 139-40. But see Sames, 732 F.2d at 52 n.3 (finding opposing party's failure to strictly comply with Rule 56(f) not "sufficiently egregious" to warrant granting summary judgment).[2] Nevertheless, failure to support a Rule 56(f) motion by affidavit is not automatically fatal to its consideration. St. Surin, 21 F.2d 1314. The Third Circuit has stated that if a Rule 56(f) motion does not meet the affidavit requirement, the opposing party "must still 'identify with specificity what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained.'" Id. (quoting Lunderstadt, 855 F.2d at

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[2]/ Some federal circuit courts of appeals have liberally applied the affidavit requirement of Rule 56(f). See, e.g., International Shortstop, Inc. v. Rally's Inc., 939 F.2d 1257, 1267 (5th Cir. 1991) (requiring only statement of party's need for additional discovery), cert. denied, 502 U.S. 1059 (1992).

71). The opposing party, however, must be specific and provide all three types of information required. See, e.g., Radich, 886 F.2d at 1394-95 (affirming district court's grant of summary judgment when opposing party only identified several unanswered interrogatories and failed to file affidavit, identify how unanswered interrogatories would preclude summary judgment, or identify information sought).

In the present matter, the Plaintiff argues that summary judgment is premature because discovery has not yet begun. (Pl.'s Resp. at 11.) The Plaintiff has filed a Rule 56(f) affidavit, and therefore has complied with the Third Circuit's mandate of strict compliance with the affidavit rule. Plaintiff’s Counsel states in his affidavit that because discovery has not yet begun, “Plaintiff has not examined Defendant’s responses to the EEOC, if any.” (Moskowitz Aff. ¶ 3.) Plaintiff’s counsel explains that “[d]iscovery could provide evidence which would be relevant in responding to a motion for summary judgment.” (Id.) Therefore, the Plaintiff requests that the Court deny the Defendant's motion so that Plaintiff may obtain discovery on the Defendant’s responses to the EEOC, something about which she has no information.

After reviewing the parties' pleadings, motions, and briefs, this Court finds that the Plaintiff has filed an affidavit, identified information that has yet to be discovered, shown that this information may affect summary judgment, and shown why the

discovery has not previously been obtained. See St. Surin, 21 F.3d at 1314 (quoting Lunderstadt, 855 F.2d at 71). In addition, this Court is required to give a party opposing a motion for summary judgment adequate time for discovery. Dowling, 855 F.2d at 139 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1985)). Therefore, because Rule 56(f) grants the district court discretion to "order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just," the Defendant's Motion for Summary Judgment is hereby denied with leave to renew following the close of discovery.

B. Defendant's Motion to Dismiss under Rule 12(b)(6)

1. Standard

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure

to state a claim under Federal Rule of Civil Procedure 12(b)(6),[3] this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

2. Plaintiff's Claims

In the present motion, the Defendant has raised four general issues. First, Silfa's Title VII claim (Count One) must be dismissed because she failed to file a Charge of Discrimination with the EEOC within the 300-day statutorily-required filing period. Second, Silfa's § 1981 claim (Count Two) must be dismissed

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3. Rule 12(b)(6) provides that:

> Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

because that claim was not filed with this Court within the two-year statute of limitations period applicable to § 1981 claims in Pennsylvania. Third, Silfa's PHRA claim (Count Three) must be dismissed because she failed to file a complaint of discrimination with the Pennsylvania Human Relations Commission ("PHRC") within the 180-day statutorily-required filing period. Fourth and finally, the claims contained in Count Four of the complaint must be dismissed because under Pennsylvania law, they fail to state a claim upon which relief may be granted. The Court will evaluate the validity of each of Plaintiff's claims under Rule 12(b)(6).

a. Count One: Title VII

Before an individual may file a complaint in federal court alleging discrimination in violation of Title VII, that individual must first file a charge of discrimination regarding those claims with the EEOC. 42 U.S.C. § 20000e-5(e); Seredinski v. Clifton Precision Products Co., 776 F.2d 56, 61 (3d Cir. 1985). For claims arising out of actions allegedly taken in Pennsylvania, such charge must be filed within 300 days of the occurrence of the alleged discriminatory act. See Seredinski, 776 F.2d at 61 (citing 42 U.S.C. § 20000e-5(e)). The 300-day filing period begins to run on the date the employee first receives notice of the adverse employment decision. Delaware State College v. Ricks, 449 U.S. 250, 259-261 (1980).

The Defendant asserts that Silfa did not file a charge of

discrimination with the EEOC within the 300-day filing period and, therefore, Count One of her Complaint must be dismissed. (Def.'s Mem. at 6.) To support this contention, the Defendant urges the Court to consider certain documents relating to Plaintiff's complaint, which it has attached to its motion to dismiss. (Def.'s Mem.; Ex.A-D.) The Third Circuit has held that a court, in considering a motion to dismiss, can examine documents or exhibits that are attached to and described in the complaint. See Chester County Intermediate Unit. v. Pennsylvania Blue Shield, 896 F.2d 808, 812 (3d Cir. 1990).

In this instance, the exhibits were not attached to the complaint. Rather, as state above, the exhibits were attached to Defendant's motion to dismiss. Thus, this Court is reluctant to examine these documents for purposes of this motion. The only record before this Court on the motion to dismiss is Plaintiff's complaint, which is silent as to when Plaintiff filed her EEOC charge. Moreover, in her response to the instant motion, Plaintiff contends that she "filed with the EEOC within 180 days." (Pl.'s Resp. at 14.) Thus, because this Court can not find as a matter of law that Plaintiff failed to file her EEOC charge within the 300-day period, Defendant's motion to dismiss Count One of Plaintiff's complaint is denied.

b. Count Two: § 1981

Generally, a statute of limitations defense cannot be used in

the context of a Rule 12(b)(6) motion to dismiss. However, "an exception is made where the complaint facially shows noncompliance with the limitations period and the affirmative defense clearly appears on the face of the pleading." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 1 (3d Cir.1994). In Pennsylvania, the appropriate statute of limitations for a § 1981 claim is two years. See Goodman v. Lukens Steel Company, 777 F.2d 113, 117-21 (3d Cir. 1985), aff'd, 482 U.S. 656 (1987); Drum v. Nasuti, 648 F.Supp. 888, 902-03 (E.D. Pa. 1986) (citing Jennings v. Shuman, 567 F.2d 1213, 1216 (3d Cir. 1977), aff'd, 831 F.2d 286 (3d Cir. 1987)). Thus, to preserve a claim under § 1981, a plaintiff must file a complaint alleging such claim in federal court within two years of the alleged act(s) of discrimination.

Plaintiff argues that "the statute of limitations for her Section 1981 claim should be 'equitably tolled' so that it could be filed in conjunction with the Title VII claim." (Pl.'s Resp. at 13.) Plaintiff concedes, however, that no precedent exists for such a proposition. (Id.) Indeed, this two year period is not tolled by the filing of a charge of discrimination with the EEOC, Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 465-66 (1975), and it begins to run on the date the employee is informed of the adverse employment action, Delaware State College v. Ricks, 449 U.S. 250, 259-61 (1980).

In this case, Silfa alleges that she was subjected to

discrimination by Meridian "until on or about April 26, 1995," (Pl.'s Compl. ¶ 10.), the day on which Silfa resigned her position with Meridian. Silfa filed her complaint in this matter on August 14, 1998, approximately three years and four months later. As a result, Silfa's claim of racial discrimination in violation of § 1981 is beyond the two-year statute of limitations governing such claims in Pennsylvania. Accordingly, Count Two of Plaintiff's complaint is dismissed.

c. Count Three: PHRA

To bring suit under the PHRA, a plaintiff must first have filed an administrative complaint with the PHRC within 180 days of the alleged act of discrimination. 43 Pa.S. §§ 959(a), 962. If a plaintiff fails to file a timely complaint with the PHRC, then he or she is precluded from judicial remedies under the PHRA. The Pennsylvania courts have strictly interpreted this requirement, and have repeatedly held that "persons with claims that are cognizable under the Human Relations Act must avail themselves of the administrative process of the Commission or be barred from the judicial remedies authorized in Section 12(c) of the Act." Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997) (citing Vincent v. Fuller Co., 532 Pa. 547, 616 A.2d 969, 974 (1992); Fye v. Central Transp. Inc., 487 Pa. 137, 409 A.2d 2 (1979); Clay v. Advanced Computer Applications, Inc., 522 Pa. 86, 559 A.2d 917 (1989); Richardson v. Miller, 446 F.2d 1247, 1248 (3d Cir. 1971)

("Since plaintiff failed to file a charge with the respective Commissions within the appropriate time periods, he is now foreclosed from pursuing the remedies provided by the Acts.")).

In Woodson, the Third Circuit explained the rationale behind such strict compliance to the administrative procedures of the PHRA:

> As the Pennsylvania Supreme Court has explained, the Pennsylvania legislature, recognizing the "invidiousness and the pervasiveness of the practice of discrimination," created with the PHRA "a procedure and an agency specially designed and equipped to attack this persisting problem and to provide relief to citizens who have been unjustly injured thereby."

Woodson, 109 F.3d at 925 (quoting Fye, 409 A.2d at 4)). Strictly interpreting the filing requirement of the PHRA allows the PHRC to use its specialized expertise to attempt to resolve discrimination claims without the parties resorting to court. Woodson, 109 F.3d at 925.

In this case, Silfa's complaint does not include any reference to an administrative filing with the PHRC. Moreover, Plaintiff admits that she did not file with the PHRC. (Pl.'s Resp. at 14.) Nonetheless, Silfa maintains that she may bring suit under the PHRA. Silfa contends that she "filed with the EEOC within 180 days" and the "EEOC referred the matter to the PHRC," (Pl.'s Resp. at 14.), thus she concludes that her PHRA claim is valid under Melincoff v. East Norriton Physician Service, Inc., No. CIV. A. 97-4554, 1998 WL 254971 (E.D. Pa. Apr.20, 1998). Plaintiff's reliance on Melincoff is misguided.

In Melincoff, the plaintiff filed with the EEOC "some 294 days after the allegedly discriminatory firing." Melincoff, 1998 WL

254971, at *6. Melincoff, however, did not file a separate discrimination charge with the PHRC. Indeed, the district court found that "Melincoff never intended to, and is not presently asserting a PHRA claim, and, thus, the PHRA's filing requirements are irrelevant." Id. Accordingly, the Melincoff court did not consider whether Melincoff's filing with the EEOC within 180 days satisfied the standard 180-day deadline with respect to Melincoff's PHRA charge. Thus, Count Three of Plaintiff's complaint is dismissed.

d. Count Four: Breach of Contract

Employment relationships in Pennsylvania are presumed to be at-will, unless an employment agreement exists to the contrary. Geary v. United States Steel Corp., 456 Pa. 171, 319 A.2d 174, 176 (1974). Defendant concludes that because "Silfa is not able to show that such a contract existed between the parties," her beach of contract claim must be dismissed. (Def.'s Mem. at 15.) This Court, however, "must accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz, 906 F.2d at 103. Plaintiff alleges in her complaint that such a contract exists. (Pl.'s Compl. ¶ 25.) Accordingly, Count Four of Plaintiff's complaint must not be dismissed at this stage of the proceedings.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BETTY SILFA	:	CIVIL ACTION
	:	
v.	:	
	:	
MERIDIAN BANK a/k/a	:	
CORESTATES BANK a/k/a	:	
FIRST UNION BANK	:	NO. 98-4293

O R D E R

AND NOW, this 8th day of April, 1999, upon consideration of the Motion to Dismiss Plaintiff's Complaint, or in the alternative, for Summary Judgment by Defendant First Union National Bank, as successor-in-interest for purposes of this case to Meridian Bank and CoreStates Bank (Docket No. 3), Plaintiff Betty Silfa's response thereto (Docket No. 4), and Defendant's reply thereto (Docket No. 5), IT IS HEREBY ORDERED that the Defendant's motion for Summary Judgment is **DENIED with leave to renew** following close of discovery, and Defendant's Motion to Dismiss is **GRANTED in part** and **DENIED in part**.

IT IS FURTHER ORDERED that:

(1) Count One of Plaintiff's complaint is **NOT DISMISSED**;

(2) Count Two of Plaintiff's complaint is **DISMISSED**;

(3) Count Three of Plaintiff's complaint is **DISMISSED**; and

(4) Count Four of Plaintiff's complaint is **NOT DISMISSED**.

BY THE COURT:

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HERBERT J. HUTTON, J.